IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1208 OF 2004

Shri.Atul Anant Gangan and others ...Petitioners

Vs.

The State of Maharashtra & Anrs. ...Respondents

....

Mr.Rajiv Patil and Nikhil Kulkarni Advocates for Petitioners
Ms.P.H.Kantharia, A.P.P. for the Respondents

....

CORAM : H.L.GOKHALE AND SMT.V.K.TAHILRAMANI,JJ.
DATE : AUGUST 24,2004

P.C.:

1. Heard Mr.Patil for the petitioners and Ms.Kantharia A.P.P. for the Respondents. Rule. Rule made returnable forthwith. Both the counsel are heard.

2. The petitioner no.1 is the uncle, petitioner no.2 is the mother and petitioner no.3 is the father of one Reshma who died in mysterious circumstances on 17th September, 2001. The concerned Police Station i.e. Malbar Hill Police Station rounded up some persons for the alleged offence which was under Section 302 as well as under Section 376 of IPC. The police carried out the investigation and quite thoroughly if the version of the police is to be accepted. Ultimately on their making report to the concerned Court i.e. Court of Metropolitan

Magistrate, 37th Court Esplanade, Mumbai, the learned Magistrate was satisfied that the case was falling under the category of undetected cases. He therefore, classified it as 'A' summary and closed the case accordingly.

3. Ms.Kantharia, the learned A.P.P. has made available for our inspection the file leading to that order. She has pointed out that all necessary steps including DNA tests were carried out. She however, fairly accepts that the order of 'A' summary was passed without giving an opportunity to the complainants to make their submissions before the Magistrate. She fairly accepts that in such matters, complainants ought to be heard before the order of 'A' summary is passed.

4. The prayer in this petition is also to reopen the investigation which is prayer clause (b). As of now, we are not directing reopening of the investigation. All that we are saying is that in view of the fact that complainants have not been heard, the order of classifying the case as 'undetected case' and marking it as 'A' summary, will stand set aside. The case bearing No.88 of 2004 registered vide C.R.No. 106 of 2001 of DCB CID, will stand restored to file of the learned Metropolitan Magistrate, 37th Court, Esplanade Mumbai. The complainants will be entitled to have inspection of the file before the matter is

heard and decided. The revived case be listed before the learned Magistrate on 13th September, 2004. The officers of the concerned department, will approach the Registrar of the concerned Court to see to it that the matter is listed on that day. The officers of the concerned Court will act on the authenticated copy of this order. Rule is made absolute as above. The complainants will be entitled to take inspection and appear on the particular date and thereafter before the trial Court. Petition is disposed of.

. Authenticated copies of this order be made available to the parties.

[H.L.GOKHALE,J.]

[SMT.V.K.TAHILRAMANI,J.]